

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff,

-against-

MATHEW K. HIGBEE, Esq.,

NICK YOUNGSON,

RM MEDIA, LTD.,

And HIGBEE & ASSOCIATES,

Defendants.

Docket No.: 18-cv-3353 (ADS) (ARC)

**DECLARATION OF
KEVIN SCHLOSSER**

KEVIN SCHLOSSER declares the following pursuant to 28 U.S.C. § 1746:

1. I am a Member of Meyer, Suozzi, English & Klein, P.C., Plaintiff law firm in this action. As such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit this declaration in opposition to the motion to dismiss of Defendants Mathew K. Higbee and Higbee & Associates' (together, "Higbee Defendants") pursuant to FRCP 12(b)(6) (the "Motion").

3. Annexed hereto as Exhibit 1 is Plaintiff's Complaint.

4. As discussed in Plaintiff's accompanying memorandum of law in opposition, the Higbee Defendants refer to, and rely on, extraneous factual matters that should not be considered on their Motion. The following Exhibits (2–5) also show how such extraneous factual matters are misleading and inaccurate.

5. Annexed hereto as Exhibit 2 is a printout of the Blue Gallery Website page that hosts hundreds of versions of the image at issue (the "Image").

6. Annexed hereto as Exhibit 3 is a printout of the recently-altered version of the Blue Gallery Website page that hosts the Image.

7. Annexed hereto as Exhibit 4 is a demonstration of how the Image previously could be obtained directly from a Google search, without accessing the Blue Gallery Website, and thereby used free without ever even seeing any mention of attribution or anything else at all from the Blue Gallery Website.

8. Annexed hereto as Exhibit 5 is a demonstration of how the Image can, now, no longer be obtained directly from a Google search.

WHEREFORE, for the reasons stated in Plaintiff's accompanying Memorandum of Law, it is respectfully submitted that the Higbee Defendants' Motion be denied and Plaintiff be granted such relief as the Court deems just and proper.

Dated: Garden City, New York
July 13, 2018

/s/ Kevin Schlosser
KEVIN SCHLOSSER